

ITEL

IteI Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

March 15, 1991

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

1-078A0551 *PR*

15642

Re: Schedule No. 23

MAR 19 1991 4:45 PM

Dear Mr. Strickland:

On behalf of IteI Rail Corporation, the above instrument in three (3) counterparts is hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$15 recordation fee.

Please record this Amendment under the Lease Agreement dated May 5, 1988, between IteI Rail Corporation and Hartford and Slocomb Railroad Company, which was recorded with the ICC on May 13, 1988, under Recordation No. 15642.

The parties to the aforementioned instrument are listed below:

IteI Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Hartford and Slocomb Railroad Company (Lessee)
2506 South Park
Dothan, Alabama 36301

This Schedule adds to the Lease Agreement ninety-six (96) 50 foot, 70-ton, Plate C boxcars bearing reporting marks within the series HS 5350-5499.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker
Patricia Schumacker
Legal Assistant

15642 PP

MAR 19 1991 4 45 PM

SCHEDULE NO. 23

INTERSTATE COMMERCE COMMISSION

THIS SCHEDULE NO. 23 ("Schedule") to that certain Lease Agreement (the "Agreement") made as of May 5, 1988, as amended, between ITEL RAIL CORPORATION ("Lessor"), and HARTFORD AND SLOCOMB RAILROAD COMPANY ("Lessee"), is made this 7 day of March, 1991.

R E C I T A L S:

- A. Lessor and Lessee are parties to Amendment No. 4 dated August 7, 1987 to the lease agreement dated October 15, 1986 under which one hundred fifty (150) boxcars bearing the reporting marks HS 5350-5499 were leased by Lessor to Lessee. Lessor had consented to Lessee entering into the Boxcar Use Agreement dated June 10, 1987 between Lessee and CSXT Transportation, Inc. ("CSXT") and which was terminated by CSXT as of May 25, 1990 in accordance with the terms of the Boxcar Use Agreement.
- B. The boxcars bearing the reporting marks 5430, 5477, 5491 and 5493 were destroyed on July 14, 1988, February 5, 1988, February 24, 1990 and April 5, 1990 respectively and are no longer subject to the lease agreement between the parties dated October 15, 1986 or the Boxcar Use Agreement dated June 10, 1987 between Lessee and CSXT.
- C. The parties now desire to remove ninety-six (96) of the boxcars within the series HS 5350-5499 (the "Car(s)") from the agreement dated October 15, 1986 and add the Cars into the Agreement and this Schedule.

NOW THEREFORE, Lessor and Lessee agree as follows:

1. All capitalized terms defined in the Agreement shall have the meanings defined therein when used in this Schedule, except that the term "Car(s)" as used herein shall only refer to the equipment described in this Schedule unless otherwise indicated.
2. Lessor hereby leases the following Cars to Lessee subject to the terms and conditions of the Agreement and this Schedule:

AAR Mech. Desig.	Description	Numbers	Length	Dimensions		Doors	No. of Cars
				Inside Width	Height	Width	
XP	70-Ton, Plate C Boxcars	HS <u>5350</u> - <u>5499</u> n.s.	50'	9' 6"	11' 1"	10' Sliding	96

3. A. The term of this Agreement, with respect to each Car described in this Schedule shall commence on the first day of the month following full execution of the Amendment No. 8 dated March 7, 1991 to the Lease Agreement dated October 15, 1986 between the Lessor and Lessee, and this Agreement ("Commencement Date") and shall continue as to all of the Cars described in this Schedule for one (1) year from such Commencement Date (the "Initial Term"). Within one hundred twenty (120) days from the Commencement Date, Lessor shall provide

to Lessee a Certificate of Delivery in the form of Exhibit A attached hereto that shall contain each Car's reporting mark and number and the expiration date of the Agreement with respect to all the Cars described in this Schedule.

- B. If the Agreement has not been terminated early and no unremedied default has occurred and is continuing under the Agreement, the Agreement shall automatically be extended from calendar month to calendar month, for a period not to exceed twenty-four (24) calendar months (each such calendar month an "Extended Term"). Provided that the Cars are not subject to the assignment agreement dated February 18, 1991 ("SRN Assignment Agreement") between Lessee as assignor ("Assignor") and Sabine River And Northern Railroad Company as assignee ("Assignee"), a copy of which is attached hereto as Exhibit C. Lessor may terminate the Agreement at any time during the Initial Term or any Extended Term as to some or all of the Cars described in this Schedule by providing not less than ten (10) days prior written notice to Lessee.
4. A. Lessor agrees to pay to Lessee a rental fee ("Rental Fee") of _____ per year for the use of Lessee's reporting marks and numbers on the Cars assigned to the SRN Assignment Agreement. Lessor shall pay the initial Rental Fee to Lessee sixty (60) days from the first day of the month following the month in which the first day of the Initial Term commences, and shall thereafter pay the Rental Fee to Lessee annually throughout the duration of the term of the SRN Assignment Agreement.
- B. If any Car(s) returns to Lessee's lines prior to the expiration or termination of the SRN Assignment Agreement, Lessor shall be responsible for all costs associated with such Car(s) being entered into and removed from a storage facility ("Storage") by Lessee, including but not limited to a switching fee of _____ each per car per occurrence, and a storage charge of _____ per car per day, and for all costs associated with returning such Car(s) to Assignee's lines. Lessee shall notify Lessor upon the placement of any Car(s) into Storage. Lessee shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the SRN Assignment Agreement, including advising Lessee's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Lessee during the term of the SRN Assignment Agreement.
5. Lessor consents to Lessee's entering into the SRN Assignment Agreement provided that Lessor shall perform Lessee's duties under the SRN Assignment Agreement, that the Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the SRN Assignment Agreement, and that Lessee shall, if directed by Lessor, assign Lessee's interest in the SRN Assignment Agreement to any party designated by Lessor.
6. Lessor shall perform or cause to be performed and shall pay all costs and expenses associated with the maintenance of the Cars described in this Schedule, except those delegated to Lessee as set forth in Subsection 5.B.

of the Agreement. With respect to the Cars listed in this Schedule, Exhibit B attached hereto is hereby added to the Agreement. Subsection 5.A. of the Agreement shall not apply with respect to such Cars.

7. Lessor agrees to reimburse Lessee, within thirty (30) days of Lessor's receipt of the receipted copy of the paid tax bill, for all taxes actually paid in cash by Lessee resulting from: a) ad valorem tax assessments on the Cars; and b) any assessment, levy or impost relating to any Car, the Agreement, or the delivery of the Cars, which remained unpaid as of the date of the delivery of the Cars to Lessee or which is assessed, levied or imposed during the term of the Agreement, except taxes on income or gross receipts imposed on Lessee or sales or use tax imposed on mileage charges, car hire revenue, or the proceeds of the sale or lease of the Cars. Lessor and Lessee will comply with all state and local laws requiring filing of ad valorem returns associated with the Cars. Notwithstanding any portion of this Section, Lessor shall not be responsible for penalty or interest assessments resulting from Lessee's failure to comply with any regulation or statute of any taxing or assessing authority. Lessee shall forward to Lessor upon receipt all correspondence, notifications of proposed tax assessments and tax bills associated with any tax reimbursable by Lessor. Lessor may, in good faith and by appropriate proceedings, contest any assessment, notification of assessment or tax bill. Lessor shall assume full responsibility for all expenses, including legal fees, resulting from such contest.

8. Rent

A. Definitions

- (i) "Eligible Lines" is defined as the railroad lines owned and operated by Lessee as of the date this Schedule is executed by the parties. Any lines purchased by Lessee or added to the Eligible Lines or any Eligible Lines sold by Lessee to another party during the Initial Term or any Extended Term effective on the date of such sale, are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined in Subsection 8.A.(iii) hereinbelow).
- (ii) "Revenue Rates" is defined as the
specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the July 1990 edition of The Official Railway Equipment Register, as may be updated from time to time.
- (iii) "Revenues" is defined as the
that are earned or due for the use and handling of the Cars on all railroad lines other than the Eligible Lines, including, but not limited to, per diem and mileage, whether or not collected and received by Lessor, and undiminished by any claimed abatement, reduction or offset caused by any action or failure of Lessee.

- B. Lessor shall receive _____ of all Revenues earned by each Car prior to and during the term of the SRN Assignment Agreement.
 - C. Upon the expiration or early termination of the SRN Assignment Agreement, Lessor shall receive all Revenues earned by each Car while such Car is off the Eligible Lines.
 - D. (i) In the event that as a result of any action or inaction by Lessee, Lessor shall receive or earn for the use of any Cars, Revenues calculated at hourly or mileage car hire rates that are lower in amount than those specified in Subsection 8.A.(ii) Lessee shall pay to Lessor, within ten (10) days of Lessor's request, an amount equal to the difference between the Revenues such Cars would have earned at the Revenue Rates and the amount of revenues actually received or earned for such Cars.
 - (ii) Should any abatement, reduction or offset occur as a result of any action or inaction of Lessee, Lessee shall, within ten (10) days of Lessor's request, reimburse Lessor the amount of such abatement, reduction or offset.
 - (iii) If, at any time during the Agreement, Lessee operates lines other than the Eligible Lines, Lessee shall supply Lessor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on any other lines operated by Lessee.
 - E. Except as provided in this Schedule, any agreement between Lessee and any other party with respect to the Cars ("Third Party Agreement(s)") shall be null and void without Lessor's prior written approval if such Third Party Agreement affects the Revenues earned by the Cars.
9. Except as expressly modified by this or any other Schedule, all terms and provisions of the Agreement shall remain in full force and effect with respect to all Cars subject to the Agreement.

10. This Schedule may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

Each party, pursuant to due corporate authority, has caused this Schedule to be executed by its authorized officer, and each of the undersigned hereto declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION

HARTFORD AND SLOCOMB RAILROAD COMPANY

By: Jimmy Hanger
Title: Manager Contract Admin
Date: March 7, 1991

By: E. J. Indri II
Title: Pres.
Date: 18 Feb '91

EXHIBIT A

CERTIFICATE OF DELIVERY

Exhibit A to Schedule No. 23 dated as of _____ by and between ITEL RAIL CORPORATION ("Lessor") and HARTFORD AND SLOCOMB RAILROAD COMPANY ("Lessee"), to Lease Agreement dated as of May 5, 1988.

CAR REPORTING MARKS AND NUMBER

The last day of the Initial Term for the above referenced Cars shall be _____.

ITEL RAIL CORPORATION
Authorized Representative

By: _____

Title: _____

Date: _____

EXHIBIT B

Running Repairs: Boxcars

Angle Cocks	Wheel Assemblies (not Wheels)
Air Hose	Yokes
Train Line	Knuckles/Pins
Operating Levers and Brackets	Slack Adjuster
Sill Steps	Couplers
Grab Irons	Draft Gears
Brake Shoes	Coupler Carriers
Brake Shoe Keys	Center Plate Repair (Not Replacement of Center Plate)
Brake Connecting Pin	Cotter Keys
Brake Head Wear Plates	Roller Bearing Adapters
Air Brakes	Door Hardware (Not Replacement of Door)
Hand Brakes	
Brake Beams and Levers	
Truck Springs	

EXHIBIT C

AGREEMENT FOR ASSIGNED SERVICE

THIS AGREEMENT FOR ASSIGNED SERVICE ("Assignment Agreement") is made and entered into as of this _____ day of _____, 1991, between HARTFORD AND SLOCOMB RAILROAD COMPANY ("Assignor") and SABINE RIVER AND NORTHERN RAILROAD COMPANY ("Assignee").

Assignor and Assignee agree as follows:

1. Assignor shall supply Assignee with the following equipment (the "Cars") subject to the terms and conditions of this Assignment Agreement:

AAR Mech Desig.	Description	Numbers	Length	Dimensions		Doors Width	No. of Cars
				Inside Width	Height		
XP	70-Ton, Plate C Boxcars	HS 5350-5499 n.s.	50' 6"	9' 6"	11' 1"	10' Sliding	96

2. Upon Assignor's instruction, and not without Assignor's instruction, Assignee shall place the Cars into an assignment pool on Assignee's railroad lines as provided for in Car Service Rule 16 and under the provisions of Car Service Directive 145 of the Code of Car Service Rules, AAR Circular No. OT-10.
3.
 - A. The term ("Initial Term") of this Assignment Agreement, with respect to each Car, shall commence on the day that such Car is first interchanged onto Assignee's lines ("Delivery") and shall expire as to all of the Cars six (6) months from the earlier of (i) the date that the last Car was delivered or (ii) the sixtieth (60th) day after the date that the first Car was Delivered. Upon the Delivery of the final Car, Assignor shall issue to Assignee a fully executed Certificate of Delivery in the form of Exhibit A attached hereto that shall contain the Cars reporting marks and numbers and the expiration date of the Assignment Agreement with respect to all the Cars as determined by Assignor. Unless, within fifteen (15) days of the date of such Certificate of Delivery, Assignee demonstrates to the reasonable satisfaction of Assignor that such expiration date is incorrect, Assignee shall be deemed to have concurred with such expiration date.
 - B. If the Assignment Agreement has not been terminated early, the Assignment Agreement shall automatically be extended for two (2) consecutive periods of six (6) months each (each such period an "Extended Term") with respect to all of the Cars described in this

EXHIBIT C

Assignment Agreement, provided that Assignor or Assignee may terminate the Assignment Agreement effective at the end of the Initial Term or any Extended Term as to some or all of the Cars by providing not less than thirty (30) days prior written notice to the other party.

4. Assignee shall comply with the handling carrier's obligations under AAR Interchange Rules while the Cars are in Assignee's possession.
5. Assignee shall load the Cars prior to loading any similar Cars interchanged from other railroads or leased by or assigned to Assignee from other parties subsequent to the date of this Assignment Agreement, purchased by Assignee subsequent to the date of this Assignment Agreement, or interchanged from other railroads; provided, however, that nothing contained in this Section shall in any event prevent or prohibit Assignee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor. If any Car remains on Assignee's lines because Assignee has not given preference to the Cars as specified in this Section, Assignee shall be liable for and remit to Assignor an amount equal to the revenues which would have been generated if such Car had been in the physical possession and use of another railroad for the entire period during which such Car is on Assignee's railroad line and had such Car traveled seventy-five miles per day (75 mpd) during such period.
6. If any Car returns to Assignor's line as a result of Assignee not filing the assignment pool code properly, Assignee shall be responsible for all costs associated with returning such Car to Assignee. Assignor shall use its best efforts to prevent any Car from being interchanged onto its lines during the term of the Assignment Agreement, including advising Assignor's connecting carrier that the Cars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Cars to Assignor during the term of the Assignment Agreement.
7. When used in this Assignment Agreement, each of the following terms shall have the definitions indicated:
 - A. "Eligible Lines" is defined as the railroad lines owned and operated by Assignee as of the date this Assignment Agreement is executed by the parties. Any lines purchased by Assignee or added to the Eligible Lines or any Eligible Lines sold by Assignee to another party, effective on the date of such sale, during the term of the Assignment Agreement are deemed to be the lines of another railroad company (a foreign road) for the purposes of determining Revenues (as defined hereinbelow). If, at any time during the term of the Assignment Agreement, Assignee operates lines other than the Eligible Lines, then Assignee shall supply Assignor with records which distinguish the movement of each Car on the Eligible Lines from the movement of such Car on the other railroad lines operated by Assignee.
 - B. "Revenue Rates" is defined as the
specified for each Car in the Hourly and Mileage Car Hire Rate Table published in the July 1990 edition of The Official Railway Equipment Register.

EXHIBIT C

- C. "Revenues" is defined as the
that are earned and received or due for the use or
handling of the Cars on the railroad lines other than the Eligible
Lines, including but not limited to, , whether
or not collected and received by Assignor and undiminished by any
claimed abatement, reduction or offset caused by any action or
inaction of Assignee.
8. Assignee shall be entitled to full for each
Car while such Car is on the Eligible Lines and shall furnish interchange
records to Assignor as requested.
9. A. Assignor shall pay to Assignee for each
Car loaded on Assignee's line ("Load Incentive") during any calendar
month during the Initial Term or any Extended Term ("Month").
- B. On the last day of each Month, Assignee shall provide Assignor with
a monthly report for the previous month, listing all the Cars loaded
by Assignee during such previous month. Such report shall include,
with respect to each such Car, the Car reporting marks and number;
and the date, time and place such Car was received empty or released
empty on the Eligible Lines. Upon Assignor's request, Assignee shall
provide further documentation to justify payment by Assignor of any
Load Incentive for any Car. Assignor shall pay to Assignee any
amounts due under this Assignment Agreement within sixty (60) days
after the last day of the month in which Assignor receives from
Assignee the satisfactory documentation with respect to any Month.
10. Upon any abatement, reduction or offset, as set forth in Subsection 7.C.
hereinabove, Assignee shall, within ten (10) days of Assignor's request,
reimburse Assignor for such amount.
11. During the Term, Assignor may, at its expense, replace any or all of the
Cars with similar cars upon not less than ten (10) days prior written
notice to Assignee.
12. Assignor is responsible for normal maintenance and repair expenses except
as provided below and except for any transportation costs incurred pursuant
to this paragraph, which shall be at Assignee's sole expense. Assignee
shall be responsible for and shall pay all costs and expenses of all repair
work or other work or materials required because of (a) damage or other
conditions caused by Assignee's negligence or misuse in loading or
unloading, or by use other than as permitted under this Assignment
Agreement; (b) damage for which Assignee is responsible under applicable
AAR Rules; (c) Assignee's failure to note any damage to any Car that
returns to its lines, the repair of which is the responsibility under AAR
Rules of any third party railroad. Assignee shall promptly notify Assignor
of any damage to, defect in, need of repair to, or destruction of any Car.
For any damaged Car that requires repairs other than running repairs, car
hire (time and mileage) shall be governed by applicable Car Hire and Car
Service Rules. In no event shall Assignee place any Car for repair at a

EXHIBIT C

private contract repair facility, or allow repair by a private contractor on the property of Assignee without Assignor's prior approval. Any such repair must be performed under the direction and control of Assignor.

13. Upon expiration or termination of this Assignment Agreement with respect to any Car(s), Assignee shall surrender possession of such Car(s) to Assignor. Assignee shall insure that each Car returned to Assignor upon the expiration or termination of the Assignment Agreement shall be (a) in the same condition, order and repair as when delivered to Assignee, normal wear excepted, (b) in interchange condition in accordance with AAR and FRA rules and regulations, (c) suitable for loading of the commodities allowed under the Assignment Agreement, (d) free from all accumulations or deposits from commodities transported in or on it while in the service of Assignee, and (e) free of any and all Rule 95 damage. Assignee shall remove the Cars from the provisions of Car Service Rule 16 and Car Service Directive 145, and deliver the Cars to a point on the Eligible Lines to be designated by Assignor. At Assignor's option and Assignee's expense, Assignee shall remark the Cars to bear new reporting marks to be provided by Assignor and use its best efforts to provide final outbound loads for each Car.
14. Assignee's rights shall be subject and subordinate to the rights of Assignor, of any lessor, and of any owner or secured party under any financing agreement with respect to the Cars. Accordingly, following notice to Assignee from any such lessor, secured party or owner that an event of default has occurred at any time (including at a time prior to the effective date of this Assignment Agreement), and is continuing under such financing agreement, such party may require either or both that rentals and other sums due hereunder shall be paid directly to such party, and that the Cars immediately be returned to such party.
15. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, or when transmitted and received by telex addressed as follows:
- | | |
|--|--|
| If to Assignor: | If to Assignee: |
| Hartford and Slocumb Railroad
Company
550 California Street
San Francisco, CA 94104 | Sabine River and Northern Railroad
Company
Old Highway 87 North
Orange, Texas 77630 |
16. This Assignment Agreement may not be modified, altered, or amended, except by an agreement in writing signed by the parties.

EXHIBIT C

17. This Assignment Agreement may be executed in two counterparts and such counterparts together shall constitute one and the same contract.

Each party, pursuant to due corporate authority, has caused this Assignment Agreement to be executed by its authorized officer, and each of the undersigned hereto declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

HARTFORD AND SLOCOMB RAILROAD COMPANY

SABINE RIVER AND NORTHERN RAILROAD
COMPANY

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT C

EXHIBIT A

CERTIFICATE OF DELIVERY

Exhibit A to Assignment Agreement dated as of _____ by
and between HARTFORD AND SLOCOMB RAILROAD COMPANY ("Assignor") and SABINE RIVER
AND NORTHERN RAILROAD COMPANY ("Assignee").

CAR REPORTING
MARKS AND NUMBER

DELIVERY DATE

The last day of the Initial Term for the above referenced Cars shall be
_____.

HARTFORD AND SLOCOMB RAILROAD COMPANY
Authorized Representative

By: _____

Title: _____

Date: _____